

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2-PLR-110375-02

Date:

June 19, 2002

### Legend

X =

A =

B =

C =

D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear

This letter responds to a letter dated February 8, 2002, submitted on behalf of X, by X's shareholders, C and D, requesting a ruling under § 1362(g) of the Internal Revenue Code.

The information submitted states that X was incorporated in Date 1, and elected to be an S corporation, effective Date 2. A was the sole shareholder of X. On Date 3,

A sold 100% of the stock in X to B, an unrelated C corporation. B was an ineligible shareholder and X's S election terminated on Date 3.

On Date 4, B sold 100% of the stock in X to C and D, who are individuals. C and D are unrelated to either A or B. C and D desire for X to be an S corporation and request permission for X to reelect to be an S corporation, effective Date 5. Date 5 is prior to the five-year waiting period imposed by § 1362(g).

Section 1362(a) provides that except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under section 1362(a) shall be terminated whenever (at any time on or after the 1<sup>st</sup> day of the 1<sup>st</sup> taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), the corporation (and any successor corporation) shall not be eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after the first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides that absent the Commissioner's consent, an S corporation whose election has terminated (or a successor corporation) may not make a new election for five taxable years as described in section 1362(g). The Commissioner, however, may permit the corporation to make a new election before the 5-year period expires. The corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted.

Based solely on the representations made and on the information submitted, we conclude that X has met its burden under §1.1362-5(a). We grant permission for X to reelect to be an S corporation, effective Date 5. A copy of this letter should be attached to X's next federal income tax return.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X otherwise satisfies the S corporation eligibility requirements.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this ruling is being sent to X.

Sincerely yours,  
J. Thomas Hines  
Chief, Branch 2  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes